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ABSTRACT

There were no United States Supreme Court decisions in 1987 on either public or private school finance. Cases discussed in this chapter fall under three major topics: (1) public funds for private schools; (2) sources and allocations of public school funds; and (3) school tax issues. Federal appellate court cases included decisions on the constitutionality of a state's school finance law, federal reimbursement for state expenses used for the education of handicapped children, and refunds of misspent and overallocated federal grant funds. State courts litigated cases concerning disputed state aid calculations, special education funding, and fees for school bus transportation. School tax cases dealt with the use of school tax bases for noneducational purposes, bond referenda, tax exemptions, tax delinquency, the use of revenue, and conflicts of interest in public school funding decisions. Finally, one state supreme court advisory opinion considered the use of public funds for private schools. (MLF)

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FINANCE

Bruce Beezer and Bettye MacPhail-Wilcox

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INTRODUCTION

There were no United States Supreme Court decisions this year on either public or private school finance. There were, however, a number of federal appellate court decisions. One decision ruled on the constitutionality of a state's school finance law. Another case concerned federal reimbursement for state expenses used for the education of handicapped children. Finally, three decisions considered refunds of misspent and overallocated federal grant funds.

During this reporting period, state courts litigated cases concerning disputed state aid calculations, special education funding, and fees for school bus transportation. School tax cases dealt with the use of school tax bases for noneducational purposes, bond referenda, tax exemptions, tax delinquency, the use of revenues, and conflicts of interest in public school funding decisions. Finally one state supreme court advisory opinion considered the use of public funds for private schools.

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PUBLIC FUNDS FOR PRIVATE SCHOOLS

The Supreme Judicial Court of Massachusetts, in response to a question proposed by the state Senate, said that a proposed bill would violate section 2 of article 46 of the Articles of Amendment to the Constitution of the Commonwealth.¹ The bill was to allow taxpayers an income tax deduction of \$1,000 for each dependent in grades kindergarten through six and \$1,500 for each dependent in grades seven through twelve who attended a public or nonprofit private school. The deduction was for tuition, textbooks, transportation, and certain tutoring services. The court first noted that the opinion only concerned section 2 of article 46 and was not ruling on a possible violation of the first amendment of the United States Constitution. In a footnote,² the court said that section 2, called the anti-aid amendment, was much more specific than the first amendment. Therefore, the United States Supreme Court's decision in *Mueller v. Allen* need not enter into the analysis.³ The court then set out three criteria from previous decisions interpreting section 2 to determine its response to the submitted question. The first criterion was whether the purpose of the bill was to aid private schools. The court regarded the tax deduction as an intent to aid private schools because public school parents are not charged tuition and their children receive free textbooks. "Therefore, the benefits . . . would flow exclusively to those taxpayers whose dependents attend private schools and, as a result, to the private schools themselves."⁴ The second criterion was whether the bill would result in substantial aid to private schools. The court noted that the bill would violate this criterion because it requires a tax subsidy to private schools and would substantially reduce the Commonwealth's tax revenue. The court believed these effects were possible because of the large student enrollment in private schools. The court then argued that the proposed bill also would violate the third criterion, political and economic abuse. Article 46, section 2 was enacted to halt, the court said, "the politically divisive and financially wasteful practice of direct aid to private schools and institutions."⁵ The enactment of the proposed tax deductions, therefore, would reduce the financial cost to those parents who sent their children to private schools and, thereby, afford direct aid for the continuance of private schools.

1. Opinion of the Justice to the Senate, 514 N.E.2d 353 (Mass. 1987).

2. *Id.* at 354 n.4.

3. 463 U.S. 388 (1983).

4. Opinion of the Justice to the Senate, 514 N.E.2d 353, 356 (Mass. 1987).

5. *Id.* at 358.

SOURCES AND ALLOCATIONS OF PUBLIC SCHOOL FUNDS

State School Finance Programs

State courts in North Carolina and Oklahoma, and the Court of Appeals for the Fifth Circuit, issued opinions regarding the constitutionality of present statutory systems of financing public schools. There were four decisions on issues related to New York's tax law. The Supreme Court of Wyoming ruled on the constitutionality of a statute calling for withholding funds for underassessment. A Pennsylvania decision decided the constitutionality of setting minimum and maximum increases in state subsidies to school districts. A California court ruled on excess funds being used to reduce state apportionment the following fiscal year.

The North Carolina Court of Appeals ruled that the statutory system for financing public education was not a violation of the state constitution.⁶ In an action seeking declaratory and injunctive relief, parents of a local school district alleged that the school finance law caused inequities in educational programs and facilities. The parents contended that the law disfavored those counties with a relatively low tax base in contrast to those counties with a higher tax base. A second allegation was that permitting the existence of five separate school systems in the county prohibited the effective use of facilities and staff and, thereby, promoted inequitable use of state and local funds. These conditions, the plaintiffs contended, result in the denial of equal opportunity to a free public education.⁷ The plaintiffs reasoned that the present statutory scheme is unconstitutional "because it requires the [s]tate to provide flat rate grants to local . . . units based solely upon the average number of pupils in attendance, without taking into account other factors affecting the units' needs for financial assistance."⁸ Some of the other factors were responsibility for building, maintaining, and improving facilities and other educational services. Furthermore, the existence of five school systems in the county fragments the total school population so that students in one system are afforded educational programs unavailable to students in other systems in the same county.

The court first noted the similarity between the 1970 approved article IX, section 2(1) of the North Carolina Constitution and the one adopted in 1868. The only change was the removal of the language that mandated separation of the races. The court stated that the framers' commentary regarding the change clearly showed they had no intent to alter the school finance scheme; rather, the real intent was to make all

6. *Britt v. North Carolina State Bd. of Educ.*, 357 S.E.2d 432 (N.C. Ct. App. 1967).

7. N.C. Const. art. IX, § 2(1) (1970).

8. *Britt v. North Carolina State Bd. of Educ.*, 357 S.E.2d 432, 434 (N.C. Ct. App. 1967).

schools accessible to every student regardless of race. The court also noted another constitutional provision that contradicted the plaintiffs' allegations of equal funding. The provision requires "proceeds of all penalties and forfeitures and of all fines collected in the several counties of any breach of the penal laws of the state, shall belong to and remain in the several counties . . . and used exclusively for maintaining free public schools."⁹ This provision, the court reasoned, further showed that financial disparities between counties for public schools were not necessarily a constitutional violation.

The next issue addressed by the court was the nature of the guarantee inherent in the constitutional requirement that "equal opportunities shall be provided for all students" found in article IX, section 2(1). Noting the need to remove the "separate but equal" phrase from the 1868 Constitution, the court stated that the framers of the change and voters were aware that racial segregation in North Carolina was over, and the new provision of "equal opportunity" was to assure only equal access to schools for all students. "Any other interpretation," the court believed, "would require drawing inferences and conclusions that not only cannot be supported, but are, in fact, contradicted by the history surrounding the adoption of the Constitution."¹⁰ The court indicated that if any changes were necessary, it was a legislative matter.

The Oklahoma school finance scheme was found not to violate either the United States Constitution or the Oklahoma Constitution by the Oklahoma Supreme Court.¹¹ The plaintiffs, a group that included the boards of education of thirty-eight school districts, alleged that the disparities in the taxable wealth between school districts affected the fiscal ability of poor districts to provide their students with resources and opportunities comparable to those of wealthier districts. These differences are caused, they claimed, by the overreliance on the ad valorem tax and the state aid formula. The court, in a comprehensive decision, first considered the plaintiffs' challenge to Oklahoma's system of ad valorem taxation. The plaintiffs contended that the assessment rates were different from county to county, and that county assessors had not used a standard method in valuing property. Noting it had ruled on the issues relating to assessment procedures since 1975, the court stated that "all counties of the state have established assessment ratios within the guidelines set by this court, and the present [s]tate [a]id formula is designed to minimize the effects of any actual variance in the ratios among the counties."¹²

9. N.C. Const. art. IX, § 7 (1970).

10. *Britt v. North Carolina State Bd. of Educ.*, 357 S.E.2d 432, 436 (N.C. Ct. App. 1987).

11. *Fair School Finance Council of Okla., Inc. v. State*, 746 P.2d 1135 (Okla. 1987).

12. *Id.* at 1143.

As to the plaintiffs' challenge that the Oklahoma school finance law violated the equal protection clause of the fourteenth amendment, the court first reviewed in detail the United States Supreme Court decisions in *San Antonio Independent School District*¹³ and *Plyer v. Doe*¹⁴ to explain why education was not a fundamental right under the equal protection clause, and why providing a student with an opportunity to acquire the basic skills to be a functional citizen met the rational relationship standard. The court then considered the plaintiffs' specific claims that before the *Rodriguez* rationale could be used certain factual information must be determined: (1) whether there was a legitimate, articulated state purpose to the Oklahoma system, and (2) whether there was any rational relationship between such purpose and the present method of financing public education.¹⁵ Although the plaintiffs claimed the purpose of the school aid program is "to provide the best possible educational opportunities for every child,"¹⁶ the court said there was nothing in the statute that mandated equalization of funding. The court regarded the current finance system to be rationally related to the strong statutory emphasis on local control because it allowed local districts flexibility in deciding what amount of money is spent on education.

Another issue raised by the plaintiffs was that *Rodriguez* was inappropriate as precedent because of the differences between the school finance laws in Oklahoma and Texas. The differences were that the Oklahoma Constitution limited the amount of ad valorem tax that could be imposed for the general operating and building funds, and imposed an indebtedness ceiling for any one year. The court ruled that these restrictions did not render the Oklahoma system unconstitutional because the equal protection clause did not require a state's school financing system to guarantee equal expenditures per child.¹⁷

The plaintiffs' third argument was that since education is mentioned in the state constitution, it is a fundamental right and, therefore, strict scrutiny must be used to determine whether the method of financing public education violates state equal protection rights. The court rejected the argument by ruling that the sections pertaining to education in the constitution "merely mandate actions by the Legislature to establish and maintain a system of free public schools. They do not on their face guarantee equal expenditures per pupil."¹⁸ Also, the court said that

13. 411 U.S. 1 (1973).

14. 457 U.S. 202 (1982).

15. *Fair School Finance Council of Okla., Inc. v. State*, 746 P.2d 1135, 1146 (Okla. 1987).

16. Okla. Stat. tit. 70, § 18-101 (1981).

17. *Fair School Finance Council of Okla., Inc. v. State*, 746 P.2d 1135, 1147 (Okla. 1987).

18. *Id.* at 1149.

since the legislature acted within its powers and the plaintiffs failed to show that it acted arbitrarily or capriciously in establishing the finance system, it had no authority to apply the strict scrutiny standard.

The continued significance of the *Rodriguez* decision was evident in a Fifth Circuit Court of Appeals opinion affirming a district court's action which granted summary judgment for the state of Louisiana relative to a challenge to its school finance law.¹⁹ The court held that the law was not a violation of the equal protection clause of the fourteenth amendment. The law mandates each parish to contribute towards the minimal cost of its students' education based on the parish's current assessed value of property. The rational relationship standard used in *Rodriguez* was utilized by the court to analyze the plaintiffs' three arguments against the way state funds were allocated to the parishes.

The first argument by the plaintiffs was that the equalization aspects of Louisiana's Minimum Foundation Program (MFP) formula results in an arbitrary rather than an equalizing effect because it reduces the state's contribution to each parish by the amount of income that can be obtained by the local ad valorem tax. The court regarded the MPF formula as one that calculates the total cost of providing every student in the district the educational services (state-mandated teacher and student ratio, special education costs, insurance, utilities, supplies) that the state requires to educate students. This cost is then reduced by the local funds raised by a uniform ad valorem property tax. The net effect of the MPF formula, with regard to cost, indicated to the court that the state attempts to provide the same education services to all students. Even though there may be disparities in actual dollar amounts, the court stated "the relevant comparison between parishes is not the state MFP dollar contribution per student in each, but rather the percentage of the total MFP cost per student which the state bears in each parish respectively."²⁰

The plaintiffs' second claim was that the equal protection clause required the MFP formula to calculate educational costs in a way that accounts for substantially all the sources of interdistrict disparities caused by local funding ability, instead of a predominantly per capita, across-the-board basis. The court found this argument unpersuasive. The court further held that the current MFP formula attempts to achieve two competing but legitimate goals of assuring each student a basic education and maintaining some local autonomy over education because the formula provides a basic education to all students by allocating funds on the basis of school membership and, without eliminating all

19. *School Bd. of the Parish of Livingston v. Louisiana State Bd. of Educ.*, 830 F.2d 563 (5th Cir. 1987).

20. *Id.* at 570.

disparities between parishes, the formula gives local boards flexibility and incentive to supplement state funds.

The third argument by the plaintiffs was that the formula used to distribute a revenue-sharing fund discriminated against those parishes that have a high percentage of property classified as homestead. This property is tax exempt in Louisiana, and the revenue-sharing fund is to offset tax losses caused by the exemption. The court regarded the 80% per capita and 20% per household method for allocating these funds as rationally related to the fund's purpose. The court said that it "is not unreasonable for the state to suppose, as the formula does, that parishes with larger concentrations of populations and homesteads will generally lose more property tax revenues due to the homestead exemption than will less populous parishes."²¹ The court concluded by holding that all three of the plaintiffs' arguments failed to prove that the Louisiana school finance scheme violated the equal protection clause.

Cases concerning the impact of state legislative enactments on the calculation of state aid to local school districts were the subject of court decisions in New York, Wyoming, Pennsylvania, and California. A New York statute created a tax assessment study commission whose implementing actions affected the tax base on which state aid was calculated.²² State aid to school districts in New York is equalized by a formula which distributes funds in inverse proportion to the combined adjusted gross income of school district residents. Taxpayers are required to identify their school district of residence with a three-digit code on their state income tax return. Inaccuracies and inefficiencies in the system led the Legislature to establish a task force instructed to work cooperatively with a sample of school districts to validate and correct the adjusted gross income reports. The statute also mandated the establishment of: (1) procedures to improve the accuracy of district income data; (2) a method for determining where the incidence of incorrect reporting was greatest; (3) a process by which local school districts could review residence data used to compute state aid; and, (4) an appeals process for school districts.²³

Twenty-two districts were identified as participants in the pilot study. Early findings from the study, suggesting that 30 to 55% of the addresses reviewed were incorrect, led the task force to recommend that 1983 income data be used to calculate 1985-86 state aid; however, school aid authorities did not adopt this recommendation. Brentwood Union Free School District was not one of the twenty-two districts designated to participate in the pilot study; however, the neighboring

21. *Id.* at 572.

22. 1984 N.Y. Laws § 3 C889.

23. *Id.* at § 2.

Bay Shore district was. Bay Shore reported to the state that 4,000 taxpayer addresses attributed to them were in fact residents of the Brentwood district. The state subsequently reduced state aid to Brentwood and increased aid to Bay Shore in 1985-86. Brentwood sought a declaratory judgment alleging that the enabling legislation did not empower the state to unilaterally and selectively reduce its educational aid.²⁴ Brentwood contended it had not been afforded the opportunity to review the additions to its tax base, challenge them, or appeal the decision. The state argued that the issue was not a proper declaratory judgment action and sought a change of venue. The Supreme Court of Suffolk County disagreed with the state, and held that the manner in which the statute was implemented had denied Brentwood of its rights. The court asserted that while it might have been appropriate to adjust the aid of the twenty-two pilot districts, it was not appropriate to adjust the aid to neighboring districts that were not participants of the pilot study. Furthermore, Brentwood was not afforded a list of addresses challenged by Bay Shore, thus denying them the opportunity to examine or appeal the challenged addresses. The state claimed that sending the income tax data to Bay Shore constituted an appeals process. The court disagreed noting that "a[n] 'appeal' in the usual sense given to the word is an action commenced by a party who believes himself to be aggrieved (school district) to a party in a position to correct the sensed grievance (the taxing authorities)." The court observed that it was not reviewing the legislature's wisdom or the propriety of its actions, but Brentwood's challenge is "to the imprecise, unfair, unfinished, incomplete program" designed by the task force. The opinion noted that the actions of the task force seemed intent upon changing the entire state aid formula in an arbitrary manner. Brentwood was awarded summary judgment and the court ordered that: (1) the state aid formula for 1985-86 and 1986-87 be recalculated without giving effect to the Bay Shore verification; (2) the state reimburse Brentwood accordingly; (3) the state be enjoined from using the proposed system until an appeals process was established and verified data were made available to Brentwood.

Implementation of the same statute was contested by the Peekskill School District.²⁵ However, Peekskill was one of the twenty-two pilot districts whose tax base was under scrutiny. Data collected by the task force were used to reduce Peekskill's state educational aid by \$1.2 million. Though the task force submitted a list of 1983 residents to the district superintendent with instructions to verify it and make corrections, the superintendent claimed that 2,352 out of the 9,012 taxpayer

24. *Brentwood Union Free School Dist. v. State*, 517 N.Y.S.2d 996 (Sup. Ct. 1987); *see also Dumain v. Carey*, 519 N.Y.S.2d 17 (App. Div. 1987).

25. *City School Dist. of the City of Peekskill v. State*, 518 N.Y.S.2d 748 (Ct. Cl. 1987).

addresses provided him should not have been attributed to the school district. Adjustments to Peekskill's state aid resulted in a shortfall of \$1.233 million in 1984-85. The district claimed that 1983 income data had been improperly used to compute state educational aid, and argued that income data for two years prior to the calendar in which the current school year commenced was the proper basis for computing their aid—not the corrected 1983 data. The court of claims dismissed the case observing that the district should seek relief in the legislature, not the courts.

Another New York school district brought suit for an interpretation of the appeals process of the finance law.²⁶ The appeals process was established to resolve disputes between school districts and the Department of Taxation and Finance regarding state aid. The district argued that the statute should be interpreted to allow all school districts to use the process, not just the twenty-four selected school districts. The court granted summary judgment for the state on the basis that the purpose of the law was to create a temporary task force to investigate the difficulties previously experienced in matching taxpayers' addresses on income tax returns and the appropriate school districts. The criterion that determined the selection of the twenty-four districts was that they had immediate effects of overreporting of income under the finance law. The court concluded that the selection of the participating districts was rational and not a violation of equal protection rights.

The calculation and distribution of state funds based on tax assessment data were disputed in a Wyoming case. Wyoming has an equalization plan for funding schools, and the state statute requires the local school board to report when local assessments differ from those of the Board of Equalization. The State Board of Equalization notified the Superintendent of Public Instruction in Wyoming that five counties were underassessed, whereupon the state superintendent reduced the foundation program allotment to these counties. Laramie County School District Number One filed suit against the State Department of Public Instruction. The superintendent alleged that the district had not filed a correction claim with the state auditor as required by the statute. The trial court granted summary judgment to the state, and the district filed a motion to amend the lawsuit. The motion was granted, and the district argued that it was unconstitutional to reduce state aid because the county assessor underassessed property in the county. Laramie County School District was awarded judgment for the full amount of the withheld funds, whereupon the state superintendent and members of the Wyoming Board of Education appealed. The state supreme court af-

26. *Kneale v. Cuomo*, 518 N.Y.S.2d 220 (App. Div. 1987).

firmed the trial court decision, observing that the right to an education cannot be conditioned on wealth.²⁷ The court stated that because education is a fundamental interest under state law, strict scrutiny criteria must be applied whenever funds are withheld because of transgressions of other segments of government.

A Pennsylvania school district was denied a motion for summary judgment challenging the constitutional provisions of a school finance statute that set minimum and maximum increases for state subsidies to local school districts.²⁸ A 1983 statute established a limit of a 7% increase over a previous year's state aid and assured at least a 2% increase. The legislature also had enacted a statute guaranteeing that no district would receive less than 80% of its entitlement for the 1983-84 and 1984-85 school years. The district alleged that the provisions had no rational relationship to a legitimate governmental purpose and were a violation of federal and state equal protection rights. The district argued that the actual effect of the provisions would protect a district with a significant decline in enrollment, even though its overall aid entitlement under the general aid formula would decrease. In contrast, a district with a major enrollment increase would be limited to a 7% increase, when it was entitled to a greater increase under the general aid formula. The district claimed that this kind of effect was irrational and would not advance a legitimate state purpose. The court reasoned that the 2% floor protected those districts with a significant decline in enrollment from a decrease in state aid, and would, therefore, help those districts maintain a required education program. The 7% ceiling was a reasonable means, the court said, to assure protection of state "available funds from theoretically unlimited entitlements and thereby ensure the adequate funding of the statewide public school system."²⁹ The court concluded that these results had a reasonable relation to the Pennsylvania legislature's constitutional mandate to assure a thorough and efficient public school system.

A California Court of Appeals reversed a superior court's decision to grant a writ of mandate to a county superintendent of schools.³⁰ The issue before the court was the proper interpretation of two sections of the California Education Code. One section contains the specific formula for calculating state aid to each county superintendent of schools.³¹ The other section establishes rules for carry-over funds. It states that "revenues received pursuant to [s]ection 2558, and any ending balance

27. *Simons v. Laramie County School Dist. No. One*, 741 P.2d 1116 (Wyo. 1987).

28. *Bensalem Township School Dist. v. Commonwealth*, 524 A.2d 1027 (Pa. Commw. Ct. 1987).

29. *Id.* at 1030.

30. *Canale v. Honig*, 239 Cal. Rptr. 780 (Ct. App. 1987).

31. Cal. Educ. Code § 2258.

from the prior fiscal year from state or local revenues may be used by the county superintendent for any of the programs operated by the county office."³² The court ruled that section 2558 controls all other sections in the statutory scheme. Since it states that excess revenues from any source may be deducted from the fiscal entitlement of the next year, the state did not violate any law by reducing the apportionment for the succeeding fiscal year.

Funds for Special Education

The following cases concern only the fiscal and revenue aspects of funding for special education programs. The substantive and remedy issues are dealt with in the chapter on "Handicapped." The court decisions in this section deal with the disallowing of state aid, paying excess costs for placement in a state-operated school, paying for residential summer school attendance, and allocating costs between title XX of the Social Security Act and state special education funds.

The California Court of Appeals upheld the constitutionality of section 59300 of the California Education Code.³³ That section requires a school district to pay 10% of the "excess annual cost" for educating in a state-operated school a student whose parents live within the district. The district contended that section 59300 was a violation of article XIII B, section 6 of the California Constitution, which forbids the state from requiring a local government agency to provide a new program or higher level of service without providing reimbursement. The court held that section 59300 did not create a new program or higher level service, but shifted 10% of the excess costs for attendance, and that the state-operated school was not a new program or a higher level of service since the state already offered the services.

The importance of accurate records was made clear in a New York court decision that upheld an order to recoup costs paid by the state to a local district.³⁴ The controversy involved state aid distributed through a Board of Cooperative Educational Services (BOCES). The state comptroller determined that the plaintiff had not "fully shared" the resource rooms required by an agreement with students from other districts. The court found that the district's evidence lacked any credibility. The records were handwritten and appeared to be only lists of student attendance in the resource rooms. The lists lacked any indication they were "official records."

A Pennsylvania school district was ordered to pay the costs asso-

32. Cal. Educ. Code § 2258.5.

33. *Lucia Mar Unified School Dist. v. Honig*, 233 Cal. Rptr. 531 (Ct. App. 1987).

34. *Lakeland Cent. School Dist. of Shrub Oak v. State Dep't of Educ.*, 522 N.Y.S.2d 304 (App. Div. 1987).

ciated with placing an emotionally disturbed student in a residential summer school.³⁵ The evidence showed that the student had difficulty readjusting to a residential school setting after spending the summer with her parents. The court reasoned that social as well as academic regression can happen in emotionally disturbed students who experience extended interruption in their education program. Even though the student's classroom performance was satisfactory during the regular school year, the court concluded that the school district should pay the costs of residential summer school. The court held this appropriate because achieving the stated purpose of the student's program, progress toward self-sufficiency, was hampered by the emotional adjustments she had to make each time she returned from the extended summer vacation.

The availability of funds under title XX of the Social Security Act³⁶ for reimbursement of state money expended in the operation of three state residential schools for handicapped children was ruled on by the Seventh Circuit Court of Appeals.³⁷ The secretary of the Department of Health and Human Services disallowed the state of Illinois' claim under title XX for educational services (\$6,311,908) and for room and board (\$2,792,804). The court, in affirming the secretary's ruling, noted the language of the Social Security Act that prohibits funding for "any educational service which the [s]tate makes *generally available* to its residents without cost and without regard to their income."³⁸ The plaintiff argued that the limitation did not apply because the services provided at the residential schools were specially designed for blind, deaf, and hospitalized students and therefore not "generally available" through local school districts. The court rejected the argument and ruled that the educational services provided at the residential schools were part of the state's free public education for handicapped students.

Federal Funds for Education

The importance of the United States Supreme Court decision in *Bell v. New Jersey*, which held that the United States has "a right to the amount of any funds overpaid,"³⁹ was again the issue in three cases.⁴⁰ In

35. *Bucks County Pub. Schools v. Department of Educ.*, 529 A.2d 1201 (Pa. Commw. Ct. 1987).

36. 42 U.S.C. §§ 1397-1397f.

37. *Illinois v. Bowen*, 808 F.2d 571 (7th Cir. 1986).

38. 42 U.S.C. § 1397a(a)(10) (emphasis in original).

39. 461 U.S. 733, 783 (1983).

40. See *The Yearbook of School Law 1984* at 225; *The Yearbook of School Law 1985* at 234; *The Yearbook of School Law 1986* at 210; and *The Yearbook of School Law 1987* at 216.

a fourth case, a federal appeals court ruled on an impact aid issue.

The Ninth Circuit Court of Appeals denied the California Department of Education's petitions for review of two final decisions by the United States Secretary of Education.⁴¹ The issue involved the refund of more than a quarter million dollars because certain conference expenses were improperly charged to the title I program. The state's primary contention was that the secretary used an improper legal standard in determining that the expenses were not chargeable to title I. The secretary interpreted the regulations to require a conference, as a whole, had to be "directly related" to title I concerns and have as its "primary purpose" the dissemination of technical information relative to title I programs in order to receive funds.⁴² The state argued that this interpretation violated the intent of title I to preserve state and local control. The court regarded the state's argument meritless because Congress had authorized the secretary to adopt appropriate regulations for title I, and the secretary's subsequent interpretation should be given substantial deference. The secretary's conclusion, that payment for conferences specifically intended to serve title I needs, was regarded by the court as reasonable.

In another opinion, the Ninth Circuit again denied a California Department of Education's petition to review a holding by an education appeal board.⁴³ The state was appealing the return of \$10,302,130 for overallocated federal funds granted for the migrant education program. The state argued that the secretary lacked authority to demand overallocated funds beyond the fiscal year in which they were granted because the regulations limit refunds to audits conducted in the grant year.⁴⁴ The court rejected the argument, ruling that the regulation cited by California only "describes the means by which surplus funds may be reallocated to where they are needed, not whether the federal government may recover funds that a state had no right to receive in the first place."⁴⁵

Petitions for review were granted by the Fifth Circuit Court of Appeals to four parish school boards in Louisiana.⁴⁶ The secretary had determined that the boards were in noncompliance with requirements for grants under the Bilingual Education Act (title VII).⁴⁷ Three of the parish boards claimed that under title VII a final audit determination

41. *California Dep't of Educ. v. Bennett*, 833 F.2d 827 (9th Cir. 1987).

42. 45 C.F.R. § 116.36 (1976).

43. *California Dep't of Educ. v. Bennett*, 829 F.2d 795 (9th Cir. 1987).

44. 34 C.F.R. § 204.22 (1982).

45. *California Dep't of Educ. v. Bennett*, 829 F.2d 795, 796 (9th Cir. 1987).

46. *Tangipahoa Parish School Bd. v. United States Dep't of Educ.*, 821 F.2d 1022 (5th Cir. 1987).

47. 20 U.S.C. §§ 3221-3262.

cannot be made before an actual audit is done for each of their programs. The court, after an extensive review of the facts, concluded that no actual audits had been conducted because the visits by federal officials were no more than "abbreviated inspections." The Office of Investigations' agents had not prepared detailed studies of the programs, nor conducted meetings between themselves and school personnel, and failed to allow school officials to review and respond to any conclusions made during the visit. The court remanded the petitions to the Department of Education for further review consistent with its observations regarding the failure to conduct a complete audit.

The fourth parish bilingual program was considered to have had an actual audit. The results showed fewer than 60% of the students in the bilingual program qualified under the language achievement test. Also, many of the students in the program did not come from homes where the primary language was other than English. The court, however, found merit in the board's position that refunding the entire grant (\$477,100) would not further the purpose of title VII. On remand to the secretary, the court said the amount to be refunded should be only for those students found ineligible for the bilingual program.

The appropriateness of the \$50 rule used by the secretary to determine the amount of impact aid a school district can receive may be finally resolved by the Federal District Court of Appeals.⁴⁸ A federal district court in California made an oral opinion declaring the \$50 rule invalid. The Ninth Circuit Court of Appeals reversed that decision.⁴⁹ The school board appealed to the United States Supreme Court which summarily disposed of the case by vacating the Ninth Circuit's judgment, and remanded with instructions to transfer the case to the Federal Circuit.⁵⁰

The \$50 rule is a thirty-year-old rule used by the secretary to aid in evaluating claims of comparability between the average per pupil expenditure in districts seeking impact aid funds and the average per pupil expenditure in other districts regarded by the applicant as comparable in "local effort." The comparison of "local effort" is "determined by dividing the total revenues for current expenditures obtained solely from local sources by the number of nonfederal children. A proposed LCR, local contribution rate, generally will not be approved if it exceeds an LEA's local effort by more than \$50.⁵¹ The purpose of the rule is to ensure that impact aid payments are related to what a district spends to

48. *Cula Vista City School Dist. v. Bennett*, 824 F.2d 1573 (Fed. Cir. 1987); *The Yearbook of School Law 1986* at 213.

49. *Cula Vista City School Dist. v. Bennett*, 762 F.2d 762 (9th Cir. 1985).

50. 106 S. Ct. 876 (1986).

51. *Cula Vista City School Dist. v. Bennett*, 824 F.2d 1573, 1577 (Fed. Cir. 1987).

educate its students without regard to the impact of federal sponsored activities.

The appeals court disagreed with the district court's reasoning that the \$50 rule limited comparison to just local effort, and concluded that the lower court had failed to take into consideration other factors such as tax resources and kind of students. The appeals court stated that the legislative history of the Impact Aid bill indicated Congress authorized consideration of tax resources and tax effort. In addition, the \$50 rule eliminates the distortion of local revenues caused by the presence of the federal government by dividing current expenditures from local revenues by the number of nonfederal children.⁵² The court of appeals concluded that the secretary made a reasonable interpretation of the statute by using "local effort" as a criterion to determine comparability between districts.

School Fees

Only one case pertaining to school fees was litigated during this reporting period. In North Dakota, parents sought to enjoin Dickinson Public Schools from collecting school bus transportation fees. They charged that the practice violated the constitutional article mandating a uniform system of free public schools.⁵³ A district court held that the state constitution did not require the state or school district to provide free transportation for students, and dismissed the case. The parents appealed, and the Supreme Court of North Dakota affirmed the lower court decision.⁵⁴ The court pointed to the existence of an authorizing statute⁵⁵ and noted that the case involved neither a suspect classification nor a fundamental or substantive right. Using the rational basis test, the court concluded that the fees were authorized by statute and were rationally related to a legitimate government objective of allocating limited resources.

SCHOOL TAX ISSUES

Use of School Tax Base Revenues

School tax cases dealt with the use of school tax bases for noneducational purposes, tax elections, and the disbursement of tax revenues. Other cases concerned bond referenda, delinquent school taxes, tax exemptions, the use of school tax revenues, and conflicts of interest in school funding.

52. *Id.* at 1582.

53. N.D. Const. art. 8, § 2.

54. *Kadmas v. Dickinson Pub. Schools*, 402 N.W.2d 897 (N.D. 1987).

55. N.D. Cent. Code § 15-34-2-06.1.

Whether a school tax base could be used for noneducational purposes was at issue in a 1987 Texas case. The Tax Increment Financing Act of 1981⁵⁶ and a constitutional amendment⁵⁷ require towns and cities in blighted or underdeveloped areas to define "reinvestment" zones where ad valorem taxes can be increased. Revenues so generated must be used to purchase property, improve approved property, or retire revenue bonds issued to fund approved projects. The city of El Paso created a tax increment district in the central business districts. School districts within the zone claimed the Act was unconstitutional as applied to them. The city sought declaratory judgment that the Tax Increment Financing Act was constitutional. The trial court stated that school districts are political subdivisions and the Act was constitutional. The school districts appealed, contending that the ordinance was unconstitutional in allowing the city to use school district ad valorem tax revenues for noneducational purposes. They also argued that they were not political subdivisions within the meaning of the constitutional amendment. The appellate court reversed the lower court decision, holding that article VII of the Texas Constitution allows the use of school funds only for schools and that school districts were not subject to the mandate of the Tax Increment Financing Act. The city of El Paso appealed. The Supreme Court of Texas reversed and remanded the decision of the court of appeals.⁵⁸ The court examined the intent of the legislators and voters who adopted the amendment via records of floor debates in the Texas Senate. Those records revealed that legislators were aware of the potential impact of the Act on school districts. The Supreme Court thus held that school districts are political subdivisions and the Act was constitutional.

Tax Elections

A special school district mill levy election in the Drayton Public School District in North Dakota was challenged as illegal, erroneous, and the subject of fraudulent voting practices by a resident.⁵⁹ On the fourteenth day after final canvassing in which the levy was declared passed, the clerk of the school district, rather than the school board members, was served with a summons and an election contest complaint. Board members were served the following day, which was one day past the fourteen-day period provided for by statute. School board members moved to dismiss the contest on the grounds of insufficiency

56. Tex. Rev. Cir. Stat. Ann. art. 1066e.

57. Tex. Const. art. 8, § 1-g(b).

58. *City of El Paso v. El Paso College Dist.*, 729 S.W.2d 296 (Tex. 1987).

59. *Elliot v. Drayton Pub. School Dist.*, 406 N.W.2d 655 (N.D. 1987).

of process and the statute of limitations. A district court dismissed the action, denying the motion for relief by the contestants, who then appealed. The state supreme court held that the school board was the proper contestee; service of process on the clerk was not service upon the board; and statutory limitations were not inapplicable as a matter of law. However, the facts of the case indicated that there was a bona fide intent to serve the papers as soon as reasonably possible. Hence, the case should not have been dismissed as untimely. It was remanded to the lower court.

Tax Revenue Disbursement

In Missouri, school districts sought to compel the county collector of revenue to disburse real property taxes which had been collected, though under protest by taxpayers. A circuit court approved settlements which disbursed the funds under a constraining agreement. The agreement was that the collector could, using future revenues due, withhold the amount of funds which were determined to be owed contesting taxpayers. The four taxpayers, seeking to recover portions of real property taxes paid under protest, attempted to intervene. The St. Louis County Circuit Court denied their motions to intervene, and the taxpayers appealed. The taxpayers alleged they should have been allowed to intervene and denial of this action deprived them of due process. The court of appeals found no merit in their claims, and affirmed the four judgments of the circuit court.⁶⁰

Bond Issuance

Cases concerning the process of raising revenues through bond referenda were adjudicated in Florida, Indiana, and Pennsylvania. Following the adoption of a bond issue resolution for capital improvements which the Florida Department of Education approved, the Palm Beach County School Board adopted a resolution containing planned improvements, a financing plan, and a call for the bond referendum. The majority of electors voted for the bond issue, the supervisor of elections certified the returns, and the school board passed a resolution authorizing it. Subsequently, the court issued a show cause order to which one resident responded. The resident charged that the board had over \$220 million in investments and that some proposed improvements already had been completed. The resident charged that these facts negated the need for the bond issue and that had electors known these facts the

60. *Maplewood-Richmond Heights School Dist. v. Leachman*, 735 S.W.2d 32 (Mo. Ct. App. 1987).

referendum would have failed. A circuit court found no merit in the charges and validated the bond issue. The resident appealed and claimed that the court erred in striking his affirmative defenses; that the board did not publish proper resolutions and had insufficient evidence for certification of the election; and that the state attorney did not contest the bond validation properly. The Florida Supreme Court affirmed the lower court decision.⁶¹

In Indiana, a taxpayer sought to enjoin the Franklin County School Board's sale of first mortgage bonds to finance construction of a new high school. The complaint questioned the legality, feasibility, and cost of the construction project. The trial court dismissed the case, enjoining the taxpayer and other members of the Franklin County Taxpayers' Association from filing further suits intended to delay construction and financing. The taxpayer appealed, and the state supreme court upheld the lower court ruling.⁶²

Pennsylvania taxpayers complained to the department of community affairs that a bond issue was invalid because the school district had not gained the consent of the electorate to increase its bonded indebtedness in excess of the 5% allowed by the Public School Statute of 1949.⁶³ The school district did not dispute this. Rather, it argued that nonelectoral borrowing limits were controlled by an amended section of the Local Government Debt Act.⁶⁴ This section provided that the aggregate net principal amount of new nonelectoral debt and outstanding debt not exceed 250% of the district's borrowing base. Borrowing base was defined as the annual arithmetic average of the total revenues received by the government unit during the last three full fiscal years preceding the date of incurring the new nonelectoral debt. The department of community affairs rejected the taxpayers' petition, whereupon they appealed. A commonwealth court agreed that the provisions for debt had been repealed by the Debt Act, and affirmed the orders of the department of community affairs.⁶⁵

Delinquent School Taxes

Three cases pertaining to delinquent school taxes were heard in Pennsylvania and Texas. Moon Area School District in Pennsylvania sought to collect parking taxes, interest, penalty charges, and liquidated damages in the amount of \$5.6 million from the operator of a county

61. *Lodwick v. School Dist. of Palm Beach County*, 506 So. 2d 407 (Fla. 1987).

62. *Huber v. Franklin County School Bd. of Trustees*, 507 N.E.2d 233 (Ind. 1987).

63. *Educ.* 24 Pa. Stat. Ann. § 6-632.

64. *Local Gov't* 53 Pa. Stat. Ann. § 6780-52.

65. *Mellinger v. Department of Community Affairs*, 533 A.2d 1119 (Pa. Commw. Ct. 1987).

parking lot located at the airport. Earlier, the district had passed a tax resolution which levied a 15% tax on the fee paid by users of nonresidential parking lots within the school district. Lot operators were required to collect the tax from patrons, retain 2% for compensation, file monthly tax returns, and pay the school district. Penalties for failure to collect the tax and pay the district were prescribed in the resolution. The airport lot operator had not paid the district since 1979. A common pleas court barred the district from seeking to collect the tax from the operator and denied its petition for funds held in escrow by the operator. The court held that the tax was constitutionally infirm. Moon Area School District appealed, and a commonwealth court reversed and remanded the case for an accounting of the tax monies owed the district.⁶⁶

Also in Pennsylvania, a school district brought action against a resident for failing to remit his per capita tax. The taxpayer alleged he could not be indebted for a tax liability because taxes are not debts; he had not refused to pay the tax; and, the legal definition of "dollar" had not been provided to him. A common pleas court granted the school district a summary judgment, and the taxpayer appealed. The lower court ruling was affirmed and the case was remanded for a determination of damages and attorney's fees due to the school district.⁶⁷

In Texas, Freer Independent School District brought suit to collect delinquent ad valorem taxes. The trial court found for the district, rendering judgment for the amount of taxes due and awarding costs, attorney's fees, interest, and foreclosing tax liens against the taxpayer's property. The decision was appealed. The state court of appeals remanded the case to the trial court for clarification of the judgment and "itemization of delinquent taxes due" on each parcel of land for which the court judgment was affirmed. The trial court ordered that the delinquent taxes be itemized, but instructed the parties to use only information contained in the original trial record to do so. The case was subsequently remanded to the trial court again with instructions to receive all necessary evidence to enable the court to determine and incorporate a legally sufficient description of each parcel of property upon which the plaintiff owed taxes.⁶⁸

School Tax Exemptions

Cases concerning school tax exemptions were litigated in Pennsylvania and New York. In Pennsylvania, G.D.L. Plaza Corporation, a nonprofit firm, entered suit against the Council Rock School District,

66. Moon Area School Dist. v. Gargony, 529 A.2d 540 (Pa. Commw. Ct. 1987).

67. Cupelli v. School Dist. of Allentown, 514 A.2d 962 (Pa. Commw. Ct. 1987).

68. Manges v. Freer Indep. School Dist., 728 S.W.2d 842 (Tex. Ct. App. 1987).

seeking exemption from a residential construction tax on an apartment complex for the elderly and handicapped. Plaza claimed it was a public charity and that the state constitution permitted exemption for such public charities. Council Rock School District argued that the apartment complex did not qualify as a public charity. A common pleas court determined that the services provided by Plaza did constitute a public charity since it provided "low cost housing for elderly persons with limited incomes." The court granted an exemption for G.D.L. Plaza, and the school district appealed. A commonwealth court applied five criteria for establishing a purely public charity to the facts in this case.⁶⁹ The five criteria were (1) advances a charitable purpose, (2) donates or renders gratuitously a substantial portion of its services, (3) benefits a substantial and indefinite class of persons who are legitimate objects of charity, (4) relieves the government of some of its burdens, and (5) operates entirely free from profit motive. The court concluded that the evidence on criteria two and four did not support Plaza's contention that it was a public charity. The judgment of the common pleas court was reversed, and G.D.L. Plaza Corporation appealed.

The Supreme Court of Pennsylvania found that Plaza had a charitable purpose, but was not founded, endowed, and maintained by a public charity.⁷⁰ Rather, all funding was derived from the federal government. Thus, it did not relieve the government of its burdens. The court affirmed the finding of the commonwealth court, noting that neither the corporation nor the beneficiaries of the housing service would be adversely affected by subjecting this property to payment of real estate taxes.

In New York, a taxpayer sought partial exemption from school taxes under the real property tax law from the town board of assessors. In 1979, the school district passed a resolution purporting to eliminate the percentage of tax exemption provided by law. The taxpayer entered a motion for partial summary judgment to the Supreme Court of Suffolk County. The court denied the motion, and the taxpayer appealed. The appellate court held that the taxpayer was entitled to a partial exemption under the real property tax law since there was no indication that the property in question did not come within its provisions.⁷¹ The court observed that each school district computes, ascertains, and adopts the tax rate needed to generate required funds for the budget, but only the legislature causes warrants for the collection of taxes to be annexed to the assessment roll. Thus, school districts lack the power to levy taxes or

69. See *The Yearbook of School Law* 1987 at 231.

70. *G.D.L. Plaza v. Council Rock School Dist.*, 526 A.2d 1173 (Pa. 1987).

71. *510 Joint Venture v. Board of Assessors*, 514 N.Y.S.2d 436 (App. Div. 1987).

to reduce the school tax exemption provided for in the real property tax law. The court reversed the trial court decision, granted the motion for partial summary judgment, and directed the Board of Assessors of the Town of Huntington to refund any excess real property school taxes paid by the taxpayer.

In other New York litigation, the Lafayette Central School District sought to determine that the Niagra Mohawk Power Corporation was not entitled to a property tax exemption. The district alleged that an exemption had been improperly granted and that additional taxes plus interest were due. The trial court entered summary judgment for the school district, and the power company appealed. The appellate court modified and affirmed as modified, stating that interest on additional taxes was not owed.⁷² The court held that only interest on late payments and delinquencies where the taxes were actually levied were appropriate. In this case, the additional taxes were the result of a court order eliminating the exemption.

Uses of Revenue

Five cases pertaining to employment contracts and one pertaining to an equipment lease were litigated. In Alabama, school employees sued a school board for breach of contract when the board refused to pay \$100 bonuses promised for perfect attendance. This incentive policy, adopted at the first board meeting in October 1983, was amended at the second board meeting in October by reducing the bonus payment to \$20 for each unused sick leave day up to a maximum of nine days. Both plans were to be retroactive to the beginning of the school year.

In March 1984, the board's attorney suggested that the incentive award might be unconstitutional. Several employees filed notice requesting pay for unused sick days. They were informed of the attorney's opinion and told that the board was considering an alternative incentive plan. The employees filed suit, and the trial court granted summary judgment for the board. On appeal, the employees alleged that the policy became enforceable when the school board adopted and published notice of it. The board contended the policy was unconstitutional under article IV of the Alabama Constitution, which prohibited extra compensation for public employees after services have been rendered or a contract made. Furthermore, they argued that payment at the end of the year was tantamount to payment after services had been rendered. The Alabama Supreme Court held that there was no prohibition against granting additional compensation in exchange for additional

72. *Lafayette Cent. School Dist. v. Niagara Mohawk Power*, 514 N.Y.S.2d 297 (App. Div. 1987).

consideration given by an employee.⁷³ Because the school employees were legally entitled to the use of their sick leave days, they had, in effect, entered into a contract for additional compensation to be paid by the board. The lower court decision was reversed and remanded.

In another Alabama case, a statute providing a 15% cost-of-living raise to teachers and full-time support personnel who worked in kindergarten through twelfth grade or with children five years of age or older was contested.⁷⁴ Several personnel who did not receive the raise sought declaratory relief and preliminary injunctions against the board. The court of civil appeals found the employees ineligible for the cost of living raise by virtue of their work assignments.⁷⁵ The employees did not work with the categories of pupils specified in the statute.

In West Virginia, voters authorized a special levy to increase the annual salaries of nonteaching personnel over a period of five years. The legislature amended the West Virginia Code to increase the minimum salary levels for such personnel prior to the approval of the special levy. A county superintendent of schools requested an interpretation of the amendments adopted by the legislature. By memorandum, the state superintendent suggested that the special levy funds were to be used to meet the amended minimum pay scales, not to supplement the minimum pay. The county superintendent proceeded to so use the special levy funds. School service personnel in the county sought declaratory judgment to construe the employment contracts and to recover funds and accrued interest alleged due as salary supplements. The county board of education filed for dismissal on the basis of the statute of limitations and was denied. Subsequently, they filed both an answer denying liability and a third-party complaint, alleging that salaries were reduced by the state board of education and other state officials. A complicated set of motions to dismiss followed which eventuated in the West Virginia Supreme Court's decision that the county board of education was not immune from contractual liability because it followed directives from the state superintendent; however, the declaratory judgment against the county board of education was barred by laches.⁷⁶ The case was remanded to the trial court which was instructed to enter an order in favor of the county board.

In Washington, the Kelso Education Association and teachers filed suit against the school district, seeking declaratory judgment and a writ of mandamus concerning the use of supplemental contracts for regular teaching assignments. Each teacher held a contract which was in part

73. *Kohen v. Board of School Comm'rs*, 510 S.E.2d 216 (Ala. 1987).

74. Ala. Code § 16-8-41.

75. *Hill v. Greene County Board of Educ.*, 510 So. 2d 264 (Ala. Ct. App. 1987).

76. *Maynard v. Board of Educ. of Wayne County*, 357 S.E.2d 247 (W. Va. 1987).

under a continuing contract and in part under a supplemental contract. The teachers, at different times, filed grievances requesting fulltime contracts and argued that district practices violated the continuing contract statute. The district entered a cross-motion for summary judgment. The trial court denied plaintiff's motion, and the teachers appealed. The Washington Court of Appeals reversed the lower court's decision, holding that the school district "may not avoid the protections under the continuing contract statute by issue of supplemental contracts for contracts issued for the basic school year."⁷⁷ By statute, supplemental contracts are authorized, but the type of duties covered are not specified. Using case law, the court determined that continuing and supplemental contracts differed on the basis of curricular or extracurricular duty assignments, days worked in addition to the basic school year, and the intent of protection in the continuing contract statute. The facts of the cases indicated that the duties specified in the teachers' supplemental contracts were for teaching classes in the regular curriculum. On remand, the court ordered that the teachers' contracts be amended to continuing contracts.

In a Texas case, the assignee for an energy management equipment company, a bank, brought action against a school district to recover money pertaining to an equipment lease. The lease was for a period of four years and eleven months. After one year, the school district stopped making monthly payments, and the bank sued. Both the bank and the school district moved for summary judgment. The trial court entered a summary judgment for the bank for ten payments due in the current year. The school district appealed, and the bank responded seeking full recovery on the balance of the lease. The appellate court observed that the Texas Education Code prohibits a school district from entering into a contract that will cause a deficiency debt against the district.⁷⁸ To recover a claim, the plaintiff must prove that funds were legally available at the time the contract was made. The Bank of Dallas did not do this, and the appellate court was unable to discover evidence that funds were appropriated for the ten-month period for which the lower court rendered judgment. The judgment of the trial court was reversed and the case remanded for further proceedings.

Conflict of Interest in School Funding

In a complex case in Mississippi, the attorney general and the ethics

77. *Kelso Educ. Ass'n v. Kelso School Dist.* No. 453, 740 P.2d 889, 891 (Wash. Ct. App. 1987).

78. *Crystal City Indep. School Dist. v. Bank of Dallas*, 727 S.W.2d 762 (Tex. Ct. App. 1987).

commission sought declaratory judgments for violations of constitutional prohibitions of conflict of interest against eight people. Three legislators who also were employed by universities, a member of the county board of supervisors who was a bank officer, a city alderman who was an elementary school principal, a legislator whose wife was employed as a teacher, another member of the county board of supervisors who was a teacher, and a legislator who was president of an insurance corporation were defendants. The trial court granted declaratory relief and denied restitution. The defendants appealed and the ethics commission cross-appealed. The Mississippi Supreme Court held that the constitutional prohibition had been violated by (1) legislators who voted for appropriation bills that funded their contracts with public schools and state universities, (2) teachers whose salaries came from discretionary local tax levies that they had voted for as a member of the governing authority making such levies, and (3) the county board member who voted for depository contracts with the bank in which he was an officer and shareholder.⁷⁹ The court did not find a conflict of interest for the legislator whose wife held a teaching contract nor for the teacher who was a county board member voting for mandated tax levies. The trial court's denial of restitution was affirmed.

79. *Frazier v. State*, 504 So. 2d 675 (Miss. 1987).